

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

-vs-

GINO ROBERT REA,

Defendant-Appellee.

Supreme Court
No. 153908

Court of Appeals
No. 324728

Circuit Court
No. 14-250517 FH

PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

	<u>PAGE</u>
INDEX TO AUTHORITIES CITED.....	ii
SUPPLEMENTAL STATEMENT OF QUESTION PRESENTED.....	vii
SUPPLEMENTAL STATEMENT OF FACTS	1
ARGUMENT:	
I. THE LOCATION WHERE DEFENDANT WAS OPERATING HIS VEHICLE, IN HIS PAVED AND UNOBSTRUCTED DRIVEWAY, WHICH EXTENDS FROM HIS DETACHED GARAGE TO THE STREET, IS “GENERALLY ACCESSIBLE TO MOTOR VEHICLES,” AND IS THEREFORE WITHIN THE PURVIEW OF MCL 257.625.....	2
RELIEF	14

INDEX TO AUTHORITIES CITED

CASES

<i>Chilcutt v State</i> , 544 NE2d 856 (Ind App, 1989).....	11
<i>City of Holland v Dreyer</i> , 184 Mich App 237; 457 NW2d 56 (1990).....	6
<i>City of Plymouth v Longeway</i> , 296 Mich App 1; 818 NW2d 419 (2012)	9, 11
<i>Epps v 4 Quarters Restoration LLC</i> , 498 Mich 518; 872 NW2d 412 (2015).....	2, 3
<i>Herman v Berrien Co</i> , 481 Mich 352; 750 NW2d 570 (2008).....	4
<i>Kent County Prosecutor v Kent County Sheriff</i> , 425 Mich 718; 391 NW2d 41 (1986)	13
<i>McNitt v Citco Drilling Co.</i> , 397 Mich 384; 245 NW2d 18 (1976).....	11
<i>People v Burton</i> , 252 Mich App 130; 651 NW2d 143 (2002).....	10
<i>People v Dunbar</i> , 499 Mich 60; 879 NW2d 229 (2016)	2, 3, 11, 13
<i>People v Feeley</i> , 499 Mich 429; 885 NW2d 223 (2016)	2
<i>People v Kowalski</i> , 489 Mich 488; 803 NW2d 200 (2011).....	4
<i>People v Miller</i> , 498 Mich 13; 869 NW2d 204 (2015).....	3
<i>People v Nickerson</i> , 227 Mich App 434; 575 NW2d 804 (1998).....	4
<i>People v Norwood</i> , 303 Mich App 466; 843 NW2d 775 (2013)	4
<i>People v Wood</i> , 450 Mich 399; 538 NW2d 351 (1995)	9, 11
<i>People v Yamat</i> , 475 Mich 49; 714 NW2d 335 (2006).....	9
<i>Reed v Beckett</i> , ___ W Va___; ___SE2d___ (Docket No. 15-1044, dec'd October 26, 2016).....	10
<i>Rettig v State</i> , 334 Md 419; 639 A2d 670 (1994).....	5
<i>Solis v Summit Contractors, Inc</i> , 558 F3d 815 (CA 8, 2009)	4
<i>State v Eckhardt</i> , 165 Vt 606; 686 A2d 104 (1996)	7
<i>State v Martinez-Gonzalez</i> , 152 Idaho 775; 275 P3d 1 (2012).....	6

<i>State v Sims</i> , 148 NM 330; 236 P3d 642 (2010).....	11
<i>Sun Valley Foods Co v Ward</i> , 460 Mich 230; 596 NW2d 119 (1999)	2
<i>Taylor v United States</i> , ___US___; 136 S Ct 2074; 195 L Ed 2d 456 (2016).....	11

MICHIGAN STATUTES

1991 PA 98	3, 6, 11
1993 PA 359	12
1994 PA 211	12
1994 PA 448	12
1994 PA 449	12
1996 PA 491	12
1998 PA 350	12
1999 PA 73	12
2000 PA 460	12
2000 PA 77	12
2003 PA 61	12
2004 PA 62	12
2006 PA 564	12
2008 PA 341	12
2008 PA 462	12
2008 PA 463	12
2012 PA 543	12
2013 PA 23	12
2014 PA 219	12
MCL 257.35a	9
MCL 257.44.....	6

MCL 257.624a	8
MCL 257.625	<i>passim</i>
MCL 257.625m.....	10
MCL 257.904.....	8
OTHER STATE STATUTES	
75 Pa Cons Stat 3802	10
625 Ill Comp Stat 5/11-201.....	10
625 Ill Comp Stat 5/11-501.....	10
Ala Code 32-5A-191	10
Ariz Rev Stat 28-1381	10
Ark Code Ann 27-49-102	10
Cal Veh Code 23152	10
Colo Rev Stat 42-4-1301	10
Conn Gen Stat 14-227a.....	10, 12
Fla Stat 316.193	10
Ga Code Ann 40-6-391	10
Hawaii Rev Stat 291E-61.....	10
Idaho Code Ann 18-8004.....	12
Idaho Code Ann 49-117.....	12
Ind Code 9-30-5-1	10
Ind Code 9-30-5-9.....	10
Iowa Code 321J.2.....	10
Kan Stat Ann 8-1501	10
Kan Stat Ann 8-1567	10
Ky Rev Stat Ann 189A.010	10
La Stat Ann 14:98	10

Md Code Transportation 21-902.....	10
Me Rev Stat Ann tit 29-A § 2411	10
Minn Stat 169.20.....	10
Miss Code Ann 63-11-30.....	10
Mo Rev Stat 577.010	10
ND Cent Code 39-10-01	10
Neb Rev Stat 60-6,108.....	12
NJ Stat 39:4-50	10
NM Stat 66-8-102	10
NY Veh & Tr Law 1192	12
Ohio Rev Code 4511.19.....	10
RI Gen Laws 31-12-1.....	10
RI Gen Laws 31-27-2.....	10
SC Code Ann 56-5-20.....	10
SC Code Ann 56-5-2930.....	10
Tenn Code Ann 55-10-401	12
Va Code Ann 18.2-266	10
Vt Stat Ann tit 23 § 4	7
Vt Stat Ann tit 23 § 1201	7
W Va Code 17C-5-2a.....	10
W Va Code 17C-5-2	10
Wis Stat 346.62.....	12

OTHER AUTHORITIES

1A Singer, <i>Sutherland Statutory Construction</i> (7 th ed).....	3
2A Singer, <i>Sutherland Statutory Construction</i> (7 th ed).....	2, 3
<i>Chicago Manual of Style</i> (15 th ed, 2003)	4

Const 1963, art 4, § 51	13
<i>Merriam-Webster's Learner's Dictionary</i> < http://www.merriam-webster.com/dictionary/generally > (accessed November 7, 2016)	5
Okasinski, <i>Applicability, to operation of motor vehicles on private property, of legislation making drunken driving a criminal offense</i> , 52 ALR 5th 655 (1997)	3
Random House Webster's College Dictionary (1997)	5, 6
University of Illinois at Urbana-Champaign Center for Writing Studies, <i>Grammar Handbook: Prepositional Phrases</i> < http://www.cws.illinois.edu/workshop/writers/prepphrases > (accessed November 7, 2016)	5

SUPPLEMENTAL STATEMENT OF QUESTION PRESENTED

I. WHETHER THE LOCATION WHERE DEFENDANT WAS OPERATING HIS VEHICLE, IN HIS PAVED AND UNOBSTRUCTED DRIVEWAY, WHICH EXTENDS FROM HIS DETACHED GARAGE TO THE STREET, IS “GENERALLY ACCESSIBLE TO MOTOR VEHICLES,” AND IS THEREFORE WITHIN THE PURVIEW OF MCL 257.625?

Defendant will contend the answer should be, “No.”

The People contend the answer is, “Yes.”

The Michigan Court of Appeals answered this question, “No.”

The Oakland County Circuit Court answered this question, “No.”

SUPPLEMENTAL STATEMENT OF FACTS

The People incorporate by reference the Statement of Facts contained in Plaintiff-Appellant's Application for Leave to Appeal.

ARGUMENT

I. THE LOCATION WHERE DEFENDANT WAS OPERATING HIS VEHICLE, IN HIS PAVED AND UNOBSTRUCTED DRIVEWAY, WHICH EXTENDS FROM HIS DETACHED GARAGE TO THE STREET, IS “GENERALLY ACCESSIBLE TO MOTOR VEHICLES,” AND IS THEREFORE WITHIN THE PURVIEW OF MCL 257.625.

This Court requested a supplemental brief “addressing whether the location where the defendant was operating a vehicle was a place within the purview of MCL 257.625.” The People incorporate by reference, the argument set forth in its Application for Leave to Appeal, outlining the errors in the opinion by the Michigan Court of Appeals.

In interpreting a statute, this Court seeks “to discern the legislative intent that may be reasonably inferred from the words expressed in the statute.”¹ The analysis begins by examining the plain language of the statute.² If the language of the statute is plain and obvious, and therefore, unambiguous; “the sole function of the court is to enforce it according to its terms,”³ and no additional judicial construction is permitted.⁴ This Court must “give effect to every word,

¹ *People v Dunbar*, 499 Mich 60, 67; 879 NW2d 229 (2016), citing *Epps v 4 Quarters Restoration LLC*, 498 Mich 518, 529; 872 NW2d 412 (2015).

² *People v Feeley*, 499 Mich 429; 885 NW2d 223 (2016), citing *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

³ 2A Singer, *Sutherland Statutory Construction* (7th ed), §46:1, p 146.

The rules of statutory construction favor according statutes with their plain and obvious meaning, and courts assume the legislature knew the plain and ordinary meanings of the words it chose to include in a statute. Courts are not free to read unwarranted meanings into an unambiguous statute, even to support a supposedly desirable policy not effectuated by the act as written. Where a statutory provision is clear and unambiguous, and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning. [*Id.* at 159-160].

⁴ *Feeley*, 499 Mich at 435.

phrase, and clause and avoid an interpretation that would render any part of the statute surplusage or nugatory.”⁵ However, if a statute does not define a word, it is appropriate to consult a dictionary to determine the plain and ordinary meaning of the word.⁶

MCL 257.625 was amended by 1991 PA 98, effective January 1, 1992, to include the language “*or generally accessible to motor vehicles.*”⁷ The statute now provides in pertinent part:

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public *or generally accessible to motor vehicles*, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. [emphasis added].

The plain language of the statute is controlling, and it unambiguously prohibits operating a motor vehicle while intoxicated, *even in the operator’s own driveway.*⁸ In an attempt to defeat the plain language of the statute, defendant amalgamates the phrase “open to the general public” onto the phrase “generally accessible to motor vehicles,” suggesting that places generally accessible *to the public* would be within the purview of the act, but places generally accessible *to motor vehicles* are not. However, those two disjunctive phrases “specify two distinct alternative

⁵ *Dunbar*, 499 Mich at 67, quoting *People v Miller*, 498 Mich 13, 25; 869 NW22d 204 (2015).

⁶ *Feeley*, 499 Mich at 437, quoting *Epps*, 498 Mich at 529.

⁷ “Courts have declared that the mere fact that a legislature enacts an amendment indicates that it intended to change the original act by creating a new right or withdrawing an existing one. Therefore, a material change in the language of the original act is presumed to indicate a change in legal rights.” 1A, Singer, *Sutherland Statutory Construction* (7th ed), § 22:30, pp 352-356.

⁸ See generally Okasinski, *Applicability, to operation of motor vehicles on private property, of legislation making drunken driving a criminal offense*, 52 ALR 5th 655 (1997).

places other than highways” where operating a vehicle while intoxicated is prohibited.⁹ “Courts assume that every word, phrase, and clause in a legislative enactment is intended and has some meaning and that none was inserted accidentally.”¹⁰

The words of a statute must be read and understood in their grammatical context, absent a clear indication that another meaning was intended.¹¹ MCL 257.625(1) prohibits persons from operating vehicles while intoxicated in certain places, including an area [“other place”] that is “generally accessible to *motor vehicles*.” The adverb “generally” modifies the adjective “accessible,” and both words modify the word “place.” “To motor vehicles” is a prepositional phrase, and a prepositional phrase may function as a noun, an adverb, or an adjective.¹² An adjective phrase modifies a noun or pronoun and always immediately follows the word it modifies, while an adverb phrase modifies a verb, adjective, or adverb.¹³ Here, the prepositional phrase “to motor vehicles” is an adverbial prepositional phrase and modifies the adjective “accessible.”

⁹ *People v Nickerson*, 227 Mich App 434, 440; 575 NW2d 804 (1998). See also *People v Kowalski*, 489 Mich 488, 499; 803 NW2d 200 (2011), n 11 (“or” is a disjunctive word “used to indicate a disunion, a separation, an alternative”); *People v Norwood*, 303 Mich App 466, 469; 843 NW2d 775 (2013) (“the use of the alternative term ‘or’ indicates a choice between two or more things”); 1A Singer, § 21:14, p 190 (“[t]he use of the disjunctive [‘or’] usually indicates alternatives and requires that those alternatives be treated separately”).

¹⁰ 2A Singer, § 46:6, pp 256-259.

¹¹ *Herman v Berrien Co*, 481 Mich 352, 366; 750 NW2d 570 (2008).

¹² See *Solis v Summit Contractors, Inc*, 558 F3d 815, 824 (CA 8, 2009), quoting *Chicago Manual of Style* (15th ed, 2003), § 5.66, p 188.

¹³ See University of Illinois at Urbana-Champaign Center for Writing Studies, *Grammar Handbook: Prepositional Phrases* <<http://www.cws.illinois.edu/workshop/writers/prepphrases>> (accessed November 7, 2016).

It is simply irrelevant whether the upper portion of defendant's driveway is generally "accessed" by the public. The pertinent question is whether defendant's driveway is "generally" accessible *to motor vehicles* [not whether it is generally accessible to the public at large],¹⁴ and the answer to that question depends on how the word "generally" is interpreted. "Generally" means "usually; ordinarily," or "with respect to the larger part; for the most part: *a generally favorable outlook*," or "without reference to particular person, situations, etc., that may be an exception: *generally speaking*."¹⁵

Defendant argues that his driveway was not "accessible" to motor vehicles at the time of his arrest because Officer DeLano parked his patrol car at the end of his driveway, thereby blocking the entryway.¹⁶ However, that factual observation actually validates the People's argument because even though defendant's driveway may not have been accessible to motor vehicles at the time of his arrest, his driveway is "usually," "ordinarily," or "for the most part" [*generally*] accessible *to motor vehicles*.

¹⁴ The Michigan Legislature could have included language prohibiting the operation of a vehicle while intoxicated on any private property generally accessible *to the public*, but it did not do so. This Court should not read something into the statute that was clearly not intended. See *Rettig v State*, 334 Md 419, 423-424; 639 A2d 670 (1994)(court refused to read a "used by the public" limitation into its broadly worded intoxicated driving statute because nothing in the language of the statute suggested that the legislature intended to make the application of the statute dependent on the nature of the land involved).

¹⁵ Random House Webster's College Dictionary (1997). See also *Merriam-Webster's Learner's Dictionary* <<http://www.merriam-webster.com/dictionary/generally>> (accessed November 7, 2016)(The word "generally" means: "in a general manner: as *a*: in disregard of specific instances and with regard to an overall picture <*generally speaking*> *b*: as a rule: usually).

¹⁶ See Defendant-Appellee's Brief in Opposition to Plaintiff-Appellant's Application for Leave to Appeal, p 14, n 11.

The definition of a “private driveway” in the Motor Vehicle Code also supports the People’s argument. The Michigan Legislature defined a “private driveway” as “any piece of privately owned and maintained property which is *used for vehicular traffic* but is not open or normally used by the public.”¹⁷ By definition, a “private driveway” is “used for vehicular traffic;” therefore, a private driveway would be usually, ordinarily, or for the most part [*generally*] “able to be used” [*accessible*]¹⁸ by motor vehicles, and clearly within the purview of MCL 257.625(1).¹⁹ It is irrelevant whether defendant’s driveway was open or normally used by *the public*,²⁰ because this case was charged under the alternative theory of operating while

¹⁷ MCL 257.44(1).

¹⁸ The word “accessible” means “easy to approach, reach, enter, speak with, or use” or “able to be used, entered, or reached.” Random House Webster’s College Dictionary (1997).

¹⁹ Because a private driveway is defined as “not open or normally used by the public,” it is not “open to the general public,” and would not have fallen within the purview of MCL 257.625 prior to the effective date of 1991 PA 98. In comparison, a “private road” is defined as “a privately owned and maintained road, allowing access to more than 1 residence or place of business, which is normally open to the public and upon which persons other than the owners located thereon may also travel.” MCL 257.44(2). Because private roads are “open to the general public,” they fell within the purview of MCL 257.625(1) even prior to the effective date of 1991 PA 98. See *City of Holland v Dreyer*, 184 Mich App 237, 238-239; 457 NW2d 56 (1990)(private mobile home park was “open to the general public.” The focus of MCL 257.625 [prior to the 1991 PA 98] was the accessibility of the area to the public). The Legislature did not have to amend MCL 257.625 to include private roads or other private areas accessible to the public, because those areas were already included within the reach of the statute, but opted to amend the statute to add the phrase *generally accessible to motor vehicle* in order to broaden the reach of the statute to include areas such as private driveways.

²⁰ Likewise, it is irrelevant whether or not the use of the property was confined to certain individuals because the question here is not whether the property in question was private property open to the public or to public access, but whether it was generally accessible to motor vehicles. *Cf. State v Martinez-Gonzalez*, 152 Idaho 775, 781, 784; 275 P3d 1 (Ct App, 2012)(to be private property open to the public, “the use of the property must not be confined to privileged individuals; rather, it is the ‘indefiniteness or unrestricted quality of potential users that gives a use its public character.’” The case law consensus “is that where an area is available to more than

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intoxicated [OWI], which prohibits operating a vehicle while intoxicated in an area *generally accessible to motor vehicles*.²¹

The Legislature could have prevented private driveways from falling within the purview of MCL 257.625 in one simple way – by not amending the statute to *add* the language “generally

a markedly few number of individuals and the DUI [driving under influence] statute covers property that is publicly accessible or ‘open to the public,’ the DUI statute applies unless there is a very clear indication of an intent to keep the public out”).

²¹ There are no known states with statutes similar to Michigan’s, prohibiting the operation of a vehicle while intoxicated in an area “generally accessible to motor vehicles.” However one state legislature [Vermont] included the phrase “general circulation of vehicles” in its definition of “highway” under its motor vehicle code. Vermont’s DUI statute prohibits operating a vehicle while under the influence “on a highway.” Vt Stat Ann tit 23 § 1201(a). A “highway, road, public road” is defined in part as: “other place, open temporarily or permanently to public or general circulation of vehicles, and shall include a way....” Vt Stat Ann tit 23 § 4(13).

The Supreme Court of Vermont held that pursuant to its DUI statute, a private residential driveway fell within the definition of a public highway, even though the defendant had only operated his vehicle from the top of his driveway to his garage. *State v Eckhardt*, 165 Vt 606, 607; 686 A2d 104 (1996). In *Eckhardt*, 165 Vt at 606, the court indicated that “[i]n determining what qualifies as a public highway, the key question is whether the way is open to the general circulation of the public.” The court noted that ownership of the way and whether the public had a right to use the way were not controlling in defining what constitutes a public highway. *Id.* at 607. The court recognized that driveways are only semi-private, and that the defendant’s driveway was open to anyone who wanted to drive in it including delivery vehicles, strangers asking for directions, postmen, Girl Scout cookie sellers, neighbors and friends. *Id.* The majority rejected the argument raised by the dissent that the driveway fell outside the scope of § 4(13) because of the limited and infrequent use by the public. *Id.* In doing so, the court recognized:

Prior cases looked only to whether gates, signs or a legal right existed to exclude the general public from driving a vehicle into the way at issue. As noted above, defendant’s driveway exhibited none of these characteristics. Nor does today’s decision create new rights in the public to use a private driveway; rather, it simply recognizes a driveway’s typical use; and extends the protection of the DUI statute to that portion of geography from which the public has not been denied access. [*Id.*].

Unlike Vermont, Michigan does not require that the driveway be open to the general circulation *of the public* or that the driveway be *generally accessible to the public*. If it did, the analysis set forth in *Eckhardt* would be persuasive. In determining whether a driveway is generally accessible *to the public*, it should not matter whether there was limited or infrequent use by the public, only whether there were gates, signs or legal rights excluding the general public from the driveway.

accessible to motor vehicles.” In other sections of the Motor Vehicle Code, the Legislature has seen fit *not* to include the language “generally accessible to motor vehicle” when addressing civil infractions or criminal penalties involving the operation of vehicles.²² Exclusive of the related OWI statutes,²³ the “**generally accessible to motor vehicles**” language has been included in only two other sections of the Motor Vehicle Code, MCL 257.624a²⁴ and MCL 257.904,²⁵ and the

²² See MCL 257.601d (moving violation, moving violation causing death and moving violation causing serious impairment -- prohibit operating a vehicle “*upon a highway or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles*”); MCL 257.626 (reckless driving, reckless driving causing serious impairment of a body function, and reckless driving causing death -- prohibit operating a vehicle “*upon a highway or a frozen public lake, stream, or pond or other place open to the general public, including, but not limited to, an area designated for the parking of motor vehicles*”); MCL 257.626a (speed contest, speed record, and drag racing -- prohibit operating a vehicle “*upon any highway, or any other place open to the general public, including any area designated for the parking of motor vehicles*”); MCL 257.626b (careless or negligent driving -- prohibits operating a vehicle “*upon a highway or a frozen public lake, stream, or pond or other place open to the general public including an area designated for the parking of vehicles*”).

²³ The “generally accessible to motor vehicles” language is included in MCL 257.625a (warrantless arrests and chemical tests), MCL 257.625c (implied consent for chemical tests), and MCL 257.625r (authority of certified drug recognition experts).

²⁴ MCL 257.624a provides in pertinent part:

(1) Except as provided in subsections (2) and (5), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger area *of a vehicle upon a highway, or within the passenger area of a moving vehicle in any place open to the general public or generally accessible to motor vehicles*, including an area designated for the parking of vehicles, in this state [emphasis added].

²⁵ MCL 257.904 provides in pertinent part:

(1) A person whose operator’s or chauffeur’s license or registration certificate has been suspended or revoked, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public **or generally accessible to motor**

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former is clearly distinguishable because it is limited to “a *moving vehicle* in any place open to the general public or generally accessible to motor vehicles.”

Defendant argues that, if the location where he was operating his vehicle fell within the purview of MCL 257.625, there is essentially no area within the state that would not fall within the purview of MCL 257.625.²⁶ Over half of the states have legislation that prohibit operating a

vehicles, including an area designated for the parking of motor vehicles, within this state.

(2) A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public *or generally accessible to motor vehicles*, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act.

²⁶ Defendant surmises that due to the broad definition of “operate,” persons could be charged with OWI if they are intoxicated and cleaning out their cars in their own driveways while the engines are running. However, defendant is merging two separate legal issues – whether a person is “operating” the vehicle, and whether the person is “operating” in a prohibited area. Whether defendant was “operating” his vehicle is not in dispute in this case because he was actually driving the vehicle.

Although defendant’s concerns surrounding the breadth of the “operate” definition are not relevant to this particular case, the People agree that the definition of “operate” or “operating” in the Motor Vehicle Code is, in fact, broad. “‘Operate’ or ‘operating’ means being in actual physical control of a vehicle.” MCL 257.35a. However, contrary to defendant’s suggestion, Michigan appellate courts have not held that the mere fact the engine of the vehicle is running is sufficient to establish the necessary element of “operating.” See *People v Wood*, 450 Mich 399, 404-405; 538 NW2d 351 (1995)(“‘operating’ should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property. Once a person using a motor vehicle as a motor vehicle has put the vehicle in motion, or in a position posing a significant risk of causing a collision, such a person continues to operate it until the vehicle is returned to a position posing no such risk); *People v Yamat*, 475 Mich 49; 714 NW2d 335 (2006)(“operate” or “actual physical control” means the power or authority to guide or manage, and the defendant was operating the vehicle when he grabbed the steering wheel causing it to veer off the road); *City of Plymouth v Longeway*, 296 Mich App 1, 5, 10; 818 NW2d 419 (2012)(the defendant was in “actual physical control” of a nonmoving vehicle because she had started the vehicle, applied the brakes, shifted the vehicle into reverse, and then shifted the vehicle back into park. *Wood* is inapplicable to a conscious driver sitting inside a stationary

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vehicle while intoxicated anywhere in the state,²⁷ but Michigan's OWI statute is not that expansive.²⁸ Nonetheless, the reach of MCL 257.625(1) is broad because its purpose is not just to prevent the collision of a vehicle being operated by a person while intoxicated with other

vehicle and engaged in operational activity such as starting the engine and changing gears). But see *People v Burton*, 252 Mich App 130, 143 (2002)(for the crime of *attempt* to operate a vehicle while intoxicated, the mere fact that the engine is running and the defendant is intoxicated inside is insufficient to support the conviction because the prosecution must prove that the defendant was intending to use his truck as a motor vehicle as opposed to just a shelter).

²⁷ See Ala Code 32-5A-191 (no geographical limitation); Ariz Rev Stat 28-1381 (no geographical limitation); Ark Code Ann 27-49-102 (“upon highways and elsewhere throughout the state”); Cal Veh Code 23152 (no geographical limitation); Colo Rev Stat 42-4-1301 (no geographical limitation); Conn Gen Stat § 14-227a (no geographical limitation); Fla Stat 316.193 (no geographical limitation); Ga Code Ann 40-6-391 (no geographical limitation but limited to those who are driving or in “actual physical control of any moving vehicle”); Hawaii Rev Stat 291E-61 (no geographical limitation); 625 Ill Comp Stat 5/11-201 & 5/11-501 (applies to highways and elsewhere throughout the state); Ind Code 9-30-5-1 & 9-30-5-9 (“it is not a defense that the accused was operating in a place other than on a highway”); Iowa Code 321J.2 (no geographical limitation); Kan Stat Ann 8-1501 & 8-1567 (applies to highways and elsewhere throughout the state); Ky Rev Stat Ann 189A.010 (“anywhere in this state”); La Stat Ann 14:98 (no limitation); Me Rev Stat Ann tit 29-A § 2411 (no geographical limitation); Md Code Transportation 21-902 (no geographical limitation); Minn Stat 169.20 (no geographical limitation); Miss Code Ann 63-11-30 (no geographical limitation); NJ Stat 39:4-50 (no geographical limitation); Mo Rev Stat 577.010 (no limitation); NM Stat 66-8-102 (no geographical limitation); ND Cent Code 39-10-01 (select provisions [reporting of accidents, careless driving, exhibition driving, drag racing, reckless or aggravated reckless driving, driving while under the influence of intoxicating liquor or controlled substances, or fleeing or attempting to elude a peace officer] apply to highways and elsewhere); Ohio Rev Code 4511.19 (no geographical limitation); 75 Pa Cons Stat 3802 (no geographical limitation); RI Gen Laws 31-12-1 and 31-27-2 (applies to highways and elsewhere throughout the state); SC Code Ann 56-5-20 and 56-5-2930 (applies to highways and elsewhere throughout the State); Va Code Ann 18.2-266 (no geographical limitation); W Va Code 17C-5-2a(a) & 17C-5-2(3)(no limitation). See also *Reed v Beckett*, ___W Va___; ___SE2d___ (Docket No. 15-1044, dec’d October 26, 2016), n 13, and cases cited therein (in nearly two dozen jurisdictions, “if state law criminalizes the operation of a motor vehicles while intoxicated, and the law contains no geographic constraints, then the courts will not read into the statute a requirement that the vehicle be operated exclusively on a public highway).

²⁸ However for commercial motor vehicles, the Michigan Legislature has seen fit to prohibit the operation of a vehicle by a person with “an alcohol content of 0.04 grams or more but less than 0.08 grams” anywhere “within this state.” MCL 257.625m.

persons or property,²⁹ but is a “prophylactic measure intended to prevent persons with impaired coordination, judgment, or sensation from being at the wheel of a car, regardless of the immediate risk of collision.”³⁰

Admittedly, there are many areas throughout the state that are generally accessible to motor vehicles as a matter of law and would be within the purview of the statute.³¹ However, as this Court has recently recognized:

[T]he potentially broad reach of a statute by itself does not invest a judicial body with the authority either to revise that statute or to interpret it in a manner inconsistent with its language. We do not sit as the “legislators in chief” of this state in order to correct statutes that may be viewed by some (or even by many) as “cumbersome,” “impractical,” or “inadequately precise.” Rather, the language of MCL 257.225(2) “compels a particular result,” and those desiring to alter this result must seek to do so “through those bodies authorized by our Constitution to undertake such decisions—typically the legislative branch[.]”³²

Twenty-four years ago, the Michigan Legislature broadened the reach of MCL 257.625 to prohibit operating a vehicle while under the influence in an area “**generally accessible to motor vehicles**.”³³ Had the legislature intended to exclude private residential driveways from the reach

²⁹ *Wood*, 450 Mich at 404. The safety of the driver is also a concern. See *State v Sims*, 148 NM 330, 338; 236 P3d 642 (2010); *Chilcutt v State*, 544 NE2d 856, 859 (Ind App, 1989).

³⁰ *Wood*, 450 Mich at 406 (Boyle, J., concurring). That purpose is evident by the fact that the Michigan Legislature defined “operate” or “operating” as “actual physical control,” and did not limit the operation to moving vehicles. See *Longeway*, 296 Mich App at 9-10 (*Wood* is inapplicable to a conscious driver). This Court has recognized that “drunk drivers are a menace and that strict enforcement of drunk driving laws is in the public interest.” *McNitt v Citco Drilling Co.*, 397 Mich 384, 394; 245 NW2d 18 (1976).

³¹ See *Taylor v United States*, ___; US___; 136 S Ct 2074, 2080; 195 L Ed 2d 456 (2016)(meaning of an element is a question of law, and not for the jury).

³² *Dunbar*, 499 Mich at 71-72, citations omitted.

³³ 1991 PA 98, effective January 1, 1992.

of MCL 257.625(1), it could have easily done so,³⁴ especially in light of the numerous amendments to the statute since that time.³⁵ The Legislature has the constitutional authority to enact a statute prohibiting the operation of a vehicle while intoxicated in specific areas under its

³⁴ In other states, their OWI [or equivalent] statutes would not extend to private residential driveways. New York specifically excludes private driveways for one or two family residences, from the scope of their OWI statute, NY Veh & Tr Law 1192(7), which provides:

7. Where Applicable. The provisions of this section shall apply upon public highways, private roads open to motor vehicle traffic and any other parking lot. For the purposes of this section “parking lot” shall mean any area or areas of private property, including a driveway, near or contiguous to and provided in connection with premises and used as a means of access to and egress from a public highway to such premises and having a capacity for the parking of four or more motor vehicles. ***The provisions of this section shall not apply to any area or areas of private property comprising all or part of property on which is situated a one or two family residence.***

Other states do not specifically exclude private residential driveways from the geographic limitations set forth in their OWI statutes, but residential driveways would not fall within the reach of their enumerated geographical limitations. See Idaho Code Ann 18-8004(1) & 49-117(16) (limited to highway, street or bridge, or upon public or private property open to the public. Private property open to the public is nonpublic property which “is available for vehicular traffic or parking by the general public with the permission of the owner or agent of the real property”); Neb Rev Stat § 60-6,108(1)(applies to highways and anywhere throughout the state *except private property which is not open to public access*); Tenn Code Ann 55-10-401 (limited to “public roads and highway...shopping center...or another premises which is generally frequented by the public at large”); Wis Stat 346.62-346.64 (limited to public highways and premises held out to the public for use of their motor vehicles). Also see Conn Gen Stat 14-227a (although the current statute contains no geographical limitations, an earlier version was limited to public highways, private roads on which a speed limit had been established, parking areas for ten or more cars, and school property).

³⁵ See 1993 PA 359; 1994 PA 211; 1994 PA 448; 1994 PA 449; 1996 PA 491; 1998 PA 350; 1999 PA 73; 2000 PA 77; 2000 PA 460; 2003 PA 61; 2004 PA 62; 2006 PA 564; 2008 PA 341; 2008 PA 462; 2008 PA 463; 2012 PA 543; 2013 PA 23; 2014 PA 219.

police powers,³⁶ and any concerns regarding the broad reach of the statute should be addressed to the Legislature, not this Court.³⁷

³⁶ “The Legislature is afforded the plenary power over matters dealing with ‘[the] public health and general welfare of the people of the state...’” *Kent County Prosecutor v Kent County Sheriff*, 425 Mich 718, 723; 391 NW2d 41 (1986), citing Const 1963, art 4, § 51. “The legislature shall pass suitable laws for the protection and promotion of public health.” Const 1963, art 4, § 51.

³⁷ *Dunbar*, 499 Mich at 72.

RELIEF

WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Marilyn J. Day, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court reverse the order of the Michigan Court of Appeals, vacate the order of dismissal, and remand to the Oakland County Circuit Court for further proceedings.

Respectfully Submitted,

JESSICA R. COOPER
OAKLAND COUNTY
PROSECUTING ATTORNEY

THOMAS R. GRDEN,
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